Although the U.S. attorney general is selected by the president and confirmed by the Senate, state attorneys general come to office in various other ways. The Attorney General is popularly elected in 43 states and Guam, and is appointed by the governor in five states (Alaska, Hawaii, New Hampshire, New Jersey and Wyoming) and in the jurisdictions of American Samoa, Northern Mariana Islands, Puerto Rico and the Virgin Islands. In Maine, the Attorney General is selected by secret ballot of the legislature and in Tennessee by its state supreme court.

Forty-six states presently provide a four-year term for the Attorney General. Maine and Vermont have a two-year term. Tennessee sets the term at eight years and in Alaska the Attorney General serves at the pleasure of the governor. Among states where the Attorney General is elected to four-year terms, 16 states limit the Attorney General to two such terms. All the others may succeed themselves an unlimited number of times.

In 2011, appointed Hawaii AG David M. Louie told the state's House Judiciary committee that he didn't believe that having the AG elected would improve the quality of legal advice. He testified: "In fact, I'm concerned about politicization. Rather than concentrating on what is the right answer, there would be an element of political calculation." In other states, attorneys general worry about how their actions will be perceived by the voting public, he said. In Hawaii, the attorney general can focus on the law.

Some governors and attorneys general disagree with one another over whether to challenge federal laws, such as the Affordable Care Act. Governor Leavitt and AG Jan Graham had some very heated and very public disputes. This dispute eventually led to the creation of the Governor's General Counsel, which expanded government.

There are at least three reasons to change to appointment of attorneys general where they are elected. **First**, elections politicize the role of attorneys general. An elected attorney general may have an incentive to pursue certain kinds of popular or high-profile cases that would enhance his or her standing with the electorate or major campaign contributors in the next run for the same office or in a subsequent run for higher office (frequently governor). And sometimes the incentive may be to sue unpopular defendants principally for popular or campaign contributor acclaim.

There's an old joke about the National Association of Attorneys General—their registered name is supposedly the National Association of Aspiring Governors. While fears about the politicization of the office are legitimate to some degree, a bigger problem is creating a sort of congressional effect — that is, a constant, costly campaign. From the moment an elected attorney general takes office, many effectively set up two shops: one to do the job and the other to get elected again or prepare to run for higher office. In 2010, 25% of the elected attorney generals in the U.S. were running for Governor, and Utah's attorney general at the time was running for the U.S. Senate. Recent campaigns for attorney general in other states ran into the millions of dollars. For example, the 2010 election in Georgia cost more than $3.6 million combined.

Bill Clinton was Arkansas' AG before becoming governor. Arkansas' current governor, Mike Beebe, also previously served as AG. In Virginia, three of the last seven governors have been AGs. Arizona and Missouri also had two AGs succeed to the governorship.

Second, the process of campaigning for election may provide inducements to do the wrong thing. For example, there is an unfortunate potential relationship -- or appearance of a relationship -- between fund-raising for an attorney general's election campaign and patronage for campaign contributors. An attorney general may have the power to refer profitable cases to attorneys; and those attorneys may have an incentive to contribute to the campaign in order to improve their chances. The attorney general also may have limited incentives to regulate or sue those who contributed to his or her campaign or at least that may be the perception.

Third, voters may not be equipped to keep informed of the attorney general's performance and hold the person accountable. One can imagine few campaigns in which relevant performance information -- on competence, management skill, legal ability and impartial administration of justice -- comes to public knowledge. The problem is perhaps greater when the candidate is not an incumbent. Elections are also susceptible to false and misleading campaign advertisements (which are largely unregulated), a problem often spotlighted in judicial elections as well. With an appointment process, a greater pool of qualified candidates may also emerge.

The terms of appointments of state attorneys general follow various models, including serving at the pleasure of the governor (as in the federal government) or serving for a fixed term (as in New Jersey). Providing the attorney general's office with a fixed term in an appointment system, such as in New Jersey, provides the office-holder independence from the governor without substituting dependency on voters and campaign contributors. One feature that the states may borrow from judicial appointment models is the use of a nominating commission. In the best judicial appointment systems, governors (or mayors) select judges from a limited group of nominees who are screened and proposed by a commission in order to add an assurance of candidate quality and to limit executive discretion, including by avoiding purely patronage and unqualified appointments. This is also adaptable to attorney general selection.